

REMARKS/ARGUMENTS

Claims 1, 3, 4, 37, 45, 49, 98-105, 111, 114-121, 123 and 141-143 are pending in the present application. In the Office Action, claims 1, 3, 4, 37, 45, 49 and 141-143 were rejected and claims 98-105, 111, 114-121 and 123 were allowed. Claims 1 and 98 have been amended and claims 141-143 have been cancelled. New claims 144 and 145 have been added. No new matter has been added. Reexamination and reconsideration of the pending claims are respectfully requested.

Claim Rejections - 35 U.S.C. § 112

Claims 1 and 142 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. In the Office Action, the Examiner argued that the specification as originally filed does not provide support for the flexible connector comprising a flexible film, the connector encapsulating a portion of at least one of the receiver assembly, the battery assembly or the microphone assembly. Applicants respectfully traverse this rejection. Support may be found *inter alia* on page 22, line 20 through page 23, line 21; page 26 lines 3-11; page 27 lines 4-16 of the specification as filed. Nevertheless, in order to expedite prosecution, Applicants have amended claim 1 to remove this language thereby obviating the rejection.

Additionally, in the Office Action, the Examiner argued that the specification does not disclose that the flexible connector has a tapered shape over a length of the connector, as recited in claim 142. Again, Applicants respectfully traverse the rejection as support may be found *inter alia* in Figs. 4 and 10 of the specification as filed. Nevertheless, in order to expedite prosecution, Applicants have cancelled claim 142.

Claim 1 was also rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In the Office Action, the Examiner indicated that it was not clear if Applicants were claiming the flexible connector comprising a flexible film for encapsulating a portion of the receiver assembly, the battery assembly or the microphone

assembly or not. As previously indicated, in order to expedite prosecution, claim 1 has been amended to remove this language, thereby obviating the rejection. Claim 1 was also amended to delete the recitation that the acoustic signals are "processed by said hearing device" as that limitation is not relevant to the claimed invention.

Claim Rejections - 35 U.S.C. § 102

In the Office Action, claims 1, 3, 37, 45, 49, 141 and 143 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,701,348 to Shennib et al. (hereinafter referred to as Shennib '348). Applicants note that the Examiner cited U.S. Patent No. 5,701,438 in the Office Action (page 3), but assume that this was a typographical error and that the Examiner meant to cite U.S. Patent No. 5,701,348. Such rejection is traversed in part and overcome in part for the following reasons.

Claim 1 recites in part that said hearing device is adapted to be inserted entirely within a wearer's ear canal medially past the aperture thereof for long-term wear therein. The device disclosed in Shennib '348 is not adapted for long-term wear. The Shennib '348 device (e.g. Fig. 23) substantially occludes the ear canal in the cartilaginous region, thus it cannot be left in place long-term as required by claim 1 because the device would interfere with hair and the natural production of physiologic debris such as cerumen. Nevertheless, claim 1 has been amended to further distinguish the present invention from Shennib '348.

Claim 1 has been amended to recite in part a battery assembly including a battery for powering said hearing device, said battery assembly axially aligned and medially positioned relative to said microphone assembly. Support for this amendment may be found *inter alia* in Fig. 5, therefore no new matter has been added. Shennib '348 fails to teach or suggest this newly added limitation.

Shennib '348 discloses a hearing device for placement in the ear canal (Abstract). The Shennib '348 device may be configured to fit completely in the canal (e.g. Fig. 23), but the depth of insertion is limited due to the profile of the device which has a main module containing the major components including a battery assembly that is not axially aligned and medially positioned relative to said microphone assembly, as now required by claim 1. Configuring the

claimed invention with the battery assembly axially aligned and medially positioned relative to said microphone assembly reduces the overall profile, thereby allowing the device to be inserted deeper into the ear canal, especially in small and contoured ear canals. Additionally, reducing device profile helps to avoid occlusion of the ear canal in the cartilaginous region which can interfere with hair and the natural production of physiologic debris, further adapting the device for long-term use.

Because a single reference fails to teach or suggest each and every limitation of the claim, anticipation under 35 U.S.C. § 102(e) cannot be established. Applicants respectfully request that the 35 U.S.C. § 102(e) rejection be withdrawn with respect to independent claim 1 and the claims depending therefrom.

Allowable Subject Matter

Claims 98-105, 111, 114-121 and 123 were allowed in the Office Action.

Applicants note that in the Office Action, the Examiner indicated that claims 98-100, 111, 116-121 and 123 were allowed (page 4) while the Office Action Summary sheet indicated that claims 98-105, 111, 114-121 and 123 were allowed. Applicants assume that the Office Action Summary sheet correctly indicated the allowed claims.

Claim 98 has been amended to recite in part that said core assembly and said sealing retainer adapted to position a medial end of the core assembly within approximately 2-3 mm of the tympanic membrane for long-term wear of the hearing device in the ear canal. Support for this amendment may be found on page 36, lines 10-11 of the application as filed therefore no new matter has been added. Claim 98 is believed to be patentable since none of the cited references disclose this limitation.

New Claims

Claims 144 and 145 have been added. Support for these claims may be found *inter alia* on page 13, lines 15-19 and page 24, lines 4-8 of the application as filed therefore no new matter has been added. Claims 144 and 145 are believed to be patentable since they depend

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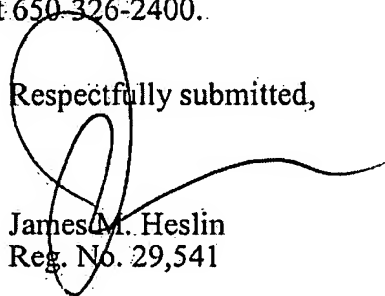
from independent claim 1 which has been distinguished from the cited reference as discussed above.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


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